



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

May 19, 1939

GERALD C. MANN
ATTORNEY GENERAL

Hon. S.A. Morrison
Criminal District Attorney
Cameron, Texas

Dear Sir:

Opinion No. 9-572
Re: The appointment of assistant
criminal district attorneys
is governed by article 386a.

Your letter addressed to Gerald C. Mann, Attorney General, has been referred to the writer for consideration and reply. You request answers to the following six questions:

1. "Can the criminal district attorney of Milam County appoint either an assistant criminal district attorney or an investigator under and by virtue of articles 324 and 324a?"
2. "If he can make such an appointment, will the appointee be paid by the Comptroller?"
3. "If the appointee cannot be paid by the Comptroller, can he be paid out of the Officer's Salary Fund of Milam County under the new fees of office law?"
4. "Does article 3903, as amended in 1937, repeal or annul the proviso in said article 324, that the 'special investigator shall be paid by the Comptroller, etc.'?"
5. "Does section 4 of article

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326q repeal or supersede in any way article 324a as applied to Milam County, or is it accumulative thereof?

6. "Is the criminal district attorney, on making appointments of assistants not possessing the qualifications required by law of districts and county attorneys under section 4 of article 326q, required to apply to the Commissioners' Court for authority to make such appointment, or can he make such appointment subject only to ratification by the Commissioners' Court as suggested by that part of said section 4, relative to his appointing three assistants with the qualifications required by law of districts, and county attorneys? Note the word 'governed' in the last sentence of section 4."

You are advised that article 326q, R. C.S. of Texas, creates the separate and distinct office of criminal district attorney from the constitutional office of district attorney. Said article provides; in section 5(a) thereof:

"It is not the intention of this Act to create any office of district attorney or any other constitutional office and the office of criminal district attorney is hereby declared to be a separate and distinct office from the constitutional office of district attorney and no criminal district attorney shall draw or be entitled to any salaries whatsoever from the state of Texas."

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You will note that articles 324 and 324a of the R.C.S. of Texas, come under title 15, "Attorneys-District and County". As criminal district attorney, you derive no authority under those articles. There is no repealing effect or contravention between the provisions of article 326q and 324, R.C.S. of Texas. Accordingly, the answers to your questions Nos: 1, 2, 4, and 5 must be in the negative.

Article 326q, section 4, R.C.S. of Texas, provides for the appointment of the staff of a criminal district attorney, as follows:

"The criminal district attorney may appoint not to exceed three assistants and one stenographer, same to be ratified by the Commissioners' Court. One of said assistants shall receive a salary not to exceed Three Thousand (\$3,000.00) Dollars per annum, one of said assistants shall receive a salary not to exceed Two Thousand Four Hundred (\$2,400.00) Dollars per annum, and one of said assistants shall receive a salary not to exceed One Thousand Eight Hundred (\$1,800.00) Dollars per annum. The stenographer shall receive a salary not to exceed One Thousand Five Hundred (\$1,500.00) Dollars per annum. Said assistants and stenographer to be paid in the same manner as the assistants and stenographer to the county attorney as are now being paid in the several counties of Texas by this Act. Upon appointment as confirmation such assistants shall take the oath of office and be authorized to perform the duties devolving

upon the criminal district attorney and to exercise any power conferred by law upon county and district attorneys. Said criminal district attorney may also appoint one or more assistants who need not possess the qualifications required by law of criminal district attorneys or county attorneys, such appointment to be governed by the provisions of article 3902 of the R.C.S. of 1925 and the duties of such assistants are to be directed by said criminal district attorney."

A criminal district attorney is relegated to the provisions set forth in the above quoted section of article 326q for the appointment of any assistant criminal district attorney. The appointment of any assistant criminal district attorney possessing the qualification of criminal district attorneys or county attorneys must be ratified by the Commissioners' Court, in order to be a valid appointment; while the appointment of an assistant criminal district attorney not possessing the qualifications required by law of criminal district attorneys or county attorneys must be governed by the provisions of article 3902, R.C.S., as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties, he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the positions to be filled and the

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amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensations to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks, and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; * * * *

It is our opinion and you are so advised that an assistant criminal district attorneys must be paid out of the Officer's Salary Fund, and that the Commissioners' Court must make an order granting authority to make the appointment, at a stated salary, of an assistant criminal district attorney not possessing the qualifications required by law of district and county attorneys, in accord with the above quoted article 5902.

Believing this to answer your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Pat Coon
Pat Coon
Assistant

PC:ob

APPROVED:

George B. Mann
ATTORNEY GENERAL OF TEXAS.

